Supreme Court, U.S.
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NO. 90-782

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

BOB ODOM, ET AL,
Petitioners

versus

DONALD M. JOHNSON
Respondent

On Petition for a Writ of Certiorari
to
The United States Court of Appeals
For the Fifth Circuit

REPLY TO BRIEF IN OPPOSITION

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ARGUMENT

In the appendix to his Response Brief, Respondent Donald Mack Johnson ("Johnson") placed before this court a series of inflammatory affidavits alleging various and sundry violations of his constitutional rights. Do not be misled. These affidavits are not only factually inaccurate[1], they are also irrelevant to the issues before this court.

To argue at this stage over the validity or strength of the evidence would be to fall into the very trap set by Johnson. Whether the petitioners acted as the affidavits suggest, though strongly denied, is not at issue here. The questions of fact raised by the affidavits need be reached only if the defendants are held to lack absolute immunity.

When absolute immunity for quasi-judicial and quasi-prosecutorial is claimed, the proper focus is on the acts which cause the harm, not on some alleged underlying conspiracy, motive or intent[2]. In Sparks v. Duval Ranch Co., 604 F.2d 976

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[1] Respondent failed to advise this court that the affiants were deposed after they provided the affidavits and that the testimony given in those depositions compromised and often contradicted the affidavits. The depositions were attached to the defendants' Motion for Summary Judgment and for Reconsideration, found in the record at p. 255.

[2] In the instant case, the harm alleged was the result of administrative hearings in which fines were levied and the licenses of respondent and his corporation were suspended or revoked. Every administrative hearing was appealed by Johnson to the state courts. See Johnson v. Odom, 470 So.2d 988 (La. App. 1st Cir. 1985), writ denied, 476 So.2d 355 (1985) and Johnson v. Odom, 536 So.2d 541 (La. App. 1st Cir. 1988). Also, other state court litigation involving the same facts alleged herein has been initiated by Johnson. See Exhibits D3, D4, D5, and D7, attachments to the record at p. 63.

(5th Cir. 1979), aff'd sub nom Dennis v. Sparks, 449 U.S. 24 (1980), the allegations were analogous to those made by Respondent, and the court rejected them:

> The material allegations in this case are . . . that [the] state judge . . . conspired with the four private defendants to deprive the plaintiffs of their oil production. This the judge did by entering an injunction, within his judicial powers to grant, prohibiting plaintiffs from producing certain oil. It is claimed that one of the defendants . . . bribed him to do this, while the other two, in knowing furtherance of the conspiracy, acted as sureties for the injunction bond. [The state judge] was, of course, unqualifiedly immune from suit for the damages occasioned by his judicial act, and as to him the suit was correctly dismissed.
>
> Sparks, supra at 978.

In Ashelman v. Pope, 793 F.2d 1072 (9th Cir. 1986), the Ninth Circuit overruled earlier decisions in which it had held that the motivations of a judge could be considered in determining if he was entitled to absolute immunity. Prior to Ashelman, the Ninth Circuit had held that a judge who made an ex parte agreement to decide a case in a certain way would not be immune because the "prior agreement is deemed the essential cause of any deprivation of federally protected rights." Beard v. Udall, 648 F.2d 1264 (9th Cir. 1981); see also Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980). After noting that the "ultimate acts in Beard and Rankin were obviously judicial in nature," the 9th Circuit, en banc, overruled Beard and Rankin because those cases had "focused not on these ultimate acts but rather on the act of conspiring to predetermine the outcome of the proceeding." Ashelman, 793 F.2d at 1077. The court went on:

There appears to be no other authority for making the underlying conspiracy the determinative act in deciding whether immunity should be available. Judges' immunity from civil liability should not be "affected by the motives with which their judicial acts are performed." Intent should play no role in immunity analysis. Moreover, allegations that a conspiracy produced a certain decision should no more pierce the actor's immunity than allegations of bad faith, personal interest or outright malevolence.

The primary policy of extending immunity to judges and to prosecutors is to ensure independent and disinterested judicial and prosecutorial decisionmaking. To effectuate this policy, we will broadly construe the scope of immunity. To foreclose immunity upon allegations that judicial and prosecutorial decisions were conditioned upon a conspiracy or bribery serves to defeat these policies.

We conclude that our prior decisions construed the immunity doctrines too narrowly by focusing on underlying actions instead of looking to the ultimate acts. . . . We therefore hold that a conspiracy between a judge and prosecutor to predetermine the outcome of a judicial proceeding, while clearly improper, nevertheless does not pierce the immunity extended to judges and prosecutors. As long as the judge's ultimate acts are judicial actions taken within the court's subject matter jurisdiction, immunity applies. Prosecutors are absolutely

> immune for quasi-judicial activities taken within the scope of their authority.
>
> Ashelman v. Pope, 793 F.2d at 1077-9 (citations omitted).

Respondent's suggestion that this court should consider his allegations of impropriety was also rejected in Holloway v. Walker, 765 F.2d 517 (5th Cir. 1985), cert. denied, 474 U.S. 1037(1985), where the court held:

> where the alleged harm, though resulting from a bribe or conspiracy, was inflicted by acts to which absolute immunity would apply, the complaint is insufficient to avoid judicial immunity.
>
> Holloway, supra at 523.

The "ultimate acts" which Johnson alleges caused him harm were decisions rendered by an administrative tribunal: the suspension of his license and the fines he received. Because the "ultimate acts" of the defendants were either judicial[3] or prosecutorial[4] in nature, the motivation of the parties or any

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[3] The ACP members were acting in a judicial capacity when they recommended that Johnson's license be suspended or revoked and that he be fined, and Odom was acting in a judicial capacity when he rendered his decisions on the innocence or guilt of Johnson and imposed penalties.

[4] Defendants Impson and Calhoun were acting within the scope of their prosecutorial authority when they decided to prosecute Johnson. See Footnote 9 at page 13 of the Petition for Certiorari.

underlying ex parte agreement to decide the case in a certain manner — even if one did exist — is irrelevant to the question of immunity.

CONCLUSION

The question before this court is whether administrative officials must prove they complied with administrative procedures in order to claim absolute immunity. This court's decision in Butz v. Economou, 438 U.S. 478 (1978), makes no such requirement. The question of absolute immunity in this case can be resolved by reference to the statutory and regulatory procedural protections afforded the respondent by state law. The allegations of underlying acts made by the Respondent are irrelevant and should be ignored.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of the foregoing have been mailed, postage prepaid, to Mr. Milton Dale Peacock, One Wood Street, Monroe, Louisiana 71201. I further certify that all parties required to be served have been served.

New Orleans, Louisiana, this _____ day of March, 1991.

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